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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

STEM, INC.,

Plaintiff,

v.

SCOTTSDALE INSURANCE
COMPANY, an Ohio corporation; and
DOES 1 through 20, inclusive,

Defendants.

Case No.: 3:20-cv-02950-CRB

**DEFENDANT SCOTTSDALE
INSURANCE COMPANY'S
RESPONSE TO PLAINTIFF STEM,
INC.'S ADMINISTRATIVE
MOTION FOR AN ORDER
PERMITTING PLAINTIFF TO
FILE A SECOND MOTION FOR
SUMMARY JUDGMENT**

Pursuant to Local Rules 7-11(b), defendant Scottsdale Insurance Company ("Scottsdale") responds to plaintiff Stem, Inc.'s ("Stem") administrative motion for an Order permitting Stem to file a second Motion for Summary Judgment ("Motion").

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND ARGUMENT**

3 Plaintiff Stem, Inc. (“Stem”) filed this action alleging that it is entitled to
4 insurance coverage under a Business and Management Indemnity Policy issued to
5 Stem by Defendant Scottsdale Insurance Company (“Scottsdale”) for a lawsuit filed
6 on May 12, 2017, entitled *Reineccius, et al. v. Rice, et. al.*, against its directors
7 (“Underlying Action”). Stem’s complaint alleges the following four claims for
8 relief: (1) Breach of Contract (the 2013-2014 Policy); (2) Breach of Contract (the
9 2016-2017 Policy); (3) Tortious Breach of the Implied Covenant of Good Faith and
10 Fair Dealing; and (4) Declaratory Relief.

11 On March 25, 2021, Stem and Scottsdale filed cross-motions for partial
12 summary judgment/summary judgment. Stem argued that the Underlying Action
13 triggered Scottsdale’s defense obligation and that the 2017 Buzby Loan Claim is a
14 separate claim that triggered Scottsdale’s defense obligation. Scottsdale argued in its
15 motion for summary judgment that it did not owe Stem’s directors a duty to defend
16 under any of its policies, and/or that its denial was not unreasonable or without proper
17 cause.

18 On May 3, 2021, the Court issued an Order granting in part and denying in part
19 the parties’ respective motions. Dkt. 51. The Court ruled that Stem was entitled to
20 partial summary judgment with respect to the 2017 Buzby Loan Claim, but otherwise
21 denied Stem’s motion. The Court further ruled that Scottsdale was entitled to partial
22 summary judgment with respect to the 2013 Series B Financing Claim, and was also
23 entitled to partial summary judgment with respect to Stem’s claims for bad faith and
24 punitive damages. The Court held that the 2017 Buzby Loan Claim triggered
25 Scottsdale’s duty to defend. The Court further ordered that the following dates be
26 vacated: (1) the June 13, 2021 trial date; (2) the May 27, 2021 pre-trial conference;
27 (3) the April 30, 2021 deadline for filing dispositive motions; and (4) the May 14,
28 2021 expert discovery cut-off date.

1 The remaining issues for trial are whether there is a potential for coverage for
2 the 2017 Buzby Loan and if so, what are the reasonable and necessary attorney's fees
3 and costs incurred for the defense of Buzby in connection with the 2017 Buzby Loan
4 claim.

5 Stem moves for permission to file a second motion for summary judgment.
6 Scottsdale does not oppose Stem's request provided that Scottsdale also be permitted
7 to file a second motion for summary judgment as more particularly set forth in
8 Scottsdale's Administrative Motion for an order permitting Scottsdale to file a
9 second motion for summary judgment. In particular, there is no potential for
10 coverage for the 2017 Buzby Loan claim because it does not allege a Loss as that
11 term is defined by the Policy. If Scottsdale successfully proves this in its Motion,
12 there will be no need for a trial.

13 Stem objected to Scottsdale's proposed Motion in the parties' Status Report
14 because it contends that Scottsdale already made this argument. However, Stem is
15 incorrect as this issue was not previously raised.

16 In addition, the court has discretion to permit multiple motions for summary
17 judgment. *Citizens for Free Speech, LLC v. County of Alameda*, 194 F.Supp.3d 968,
18 970 (N.D. Cal. 2016). The denial of an insurer's motion for summary judgment on
19 the duty to defend does not necessarily mean the insurer has a duty to defend, and an
20 insurer may still prove the lack of such a duty at trial. *McMillin Companies, LLC v.*
21 *American Safety Indemnity Co.*, 233 Cal.App.4th 518, 533 (2015) (duty to defend on
22 summary judgment not established where court did not cite to a factual dispute).
23 Thus, Scottsdale is still entitled to prove that there is no potential for coverage for
24 the Underlying Action based upon issues not addressed by the court.

25 Moreover, it would be patently unfair to allow Stem to file a second motion for
26 summary judgment and at the same time, preclude Scottsdale from filing a second
27 motion for summary judgment.

1 **II. CONCLUSION**

2 For the foregoing reasons, Scottsdale respectfully requests that if Stem's
3 motion is granted, that its motion also be granted and that the parties be permitted to
4 file a second motion for summary judgment.

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6 DATED: June 7, 2021

COZEN O'CONNOR

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8 By: /s/ Valerie D. Rojas

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Angel Marti, III

Attorneys for Defendant

SCOTTSDALE INSURANCE COMPANY